



# NEWS

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## **SUMMARY OF CASES ACCEPTED DURING THE WEEK OF DECEMBER 10, 2001**

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#01-158 In re Michele D., S101922. (B143803; 92 Cal.App.4th 600.) Petition for review after the Court of Appeal affirmed orders in a wardship proceeding. This case includes the issue of what degree of force, if any, is required to establish kidnapping under Penal Code section 207, subdivision (a), when the alleged victim is a nonresisting infant. (See People v. Hill (2000) 23 Cal.4th 853, 857.)

#01-159 Kavanaugh v. West Sonoma County Union High School Dist., S101633. (A093779; 92 Cal.App.4th 411.) Petition for review after the Court of Appeal reversed the judgment in a proceeding for a writ of mandate. This case raises a question relating to Education Code, section 44916, which provides in part that “[a]t the time of initial employment during each academic year, each new certificated employee of the school district shall receive a written statement indicating his employment status” and that “[i]f a written statement does not indicate the temporary nature of the employment, the certificated employee shall be deemed to be a probationary employee.” The case concerns whether, under that section, a written statement indicating the temporary nature of the employment is timely if provided to the employee on the date the school district

(over)

takes formal action to hire the employee rather than on the date the employee begins work.

#01-160 Pavlovich v. Superior Court, S100809. (H021961; 91 Cal.App.4th 409, mod. 92 Cal.App.4th 15e.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case concerns whether a defendant in Texas who posted DVD de-encryption software on an Internet website was subject to suit in California based on allegations he knew or should have known that his conduct could harm industries with a strong presence in California.

#01-161 People v. Superior Court (Ghilotti), S102527. (A096959; no opinion.) Petition for review after the Court of Appeal denied a petition for peremptory writ of prohibition or mandate. The court issued an order to show cause and limited the issues to be briefed and argued to the following:

- (1) whether Welfare and Institutions Code, section 6601, subdivision (h), authorizes the State Department of Mental Health to request the filing of a petition for recommitment under the Sexually Violent Predators Act without the concurrence of two mental health evaluators that the person “has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody” (§ 6601, subd. (d));
- (2) if the answer to question (1) is “no,” when the filing of such a petition is challenged on the ground that it lacks the concurrence of two mental health evaluators that the person meets the criteria set forth in section 6601, subdivision (d), should the trial court independently examine the evaluators’ reports to determine whether the reports reflect application of the correct legal interpretation of the statutory criteria, and if they do not, should the trial court determine whether the evaluators’ assessments, viewed in the light of the correct standard, would support the filing of a petition; and
- (3) what is the correct legal interpretation of the phrase “*likely to engage in acts of sexual violence without appropriate treatment and custody*” (italics added) as used in section 6601, subdivision (d).

#01-162 People v. Gordon, S101457. (H021806; 92 Cal.App.4th 342.) Petitions for review after the Court of Appeal affirmed an order of commitment as a sexually violent predator. The court ordered briefing deferred pending decision in People v. Hurtado, S082112 (#99-158), which concerns whether an order of commitment under the Sexually Violent Predator Act requires proof that the defendant's is likely to commit future "predatory" offenses within the meaning of Welfare and Institutions Code section 6600 subdivision (e).

#01-163 Harty v. Vance Brown Inc., S101731. (H021155; unpublished opinion.) Petition for review after the Court of Appeal affirmed the summary judgment in a civil action. The court ordered briefing deferred pending decision in Hooker v. Department of Transportation, S091601 (#00-139), which concerns whether under the decisions in Privette v. Superior Court (1993) 5 Cal.4th 689, Toland v. Sunland Housing Group, Inc. (1998) 18 Cal.4th 253, and Camargo v. Tjaarda Dairy (2001) 25 Cal.4th 1235, an employee of an independent contractor is barred from pursuing a lawsuit against the hirer of the independent contractor on the theory the hirer negligently exercised control it had retained.

#01-164 Krough v. Reynolds Packing, Inc., S101309. (C029948; 91 Cal.App.4th 1243.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court ordered briefing deferred pending decision in Allen v. Sully-Miller Contracting Co., S088829 (#00-81), which concerns whether Civil Code section 3333.4 bars recovery of non-economic losses in an action by an uninsured motorist against a private construction company for premises liability.

## **DISPOSITIONS**

The following cases were dismissed and remanded to the Court of Appeal:

#01-31 Garcetti v. Superior Court, S094812.

#99-112 People v. Gour, S079531.

The following cases were transferred for reconsideration in light of People v. Williams, 26 Cal.4th 779:

#99-174 People v. Bowden, S082079.

#99-128 People v. Cuccaro, S079786.

#99-147 People v. Ridley, S080242.

#99-200 People v. Simonton, S082972.

#99-69 People v. Wright, S077185.

## STATUS

#01-155 People v. Batts, S101183. The court ordered briefing expanded to include the following issues: When a trial court denies a defendant's claim of double jeopardy, should the defendant be required to seek timely review of the denial by a petition for extraordinary writ as a condition to raising the double jeopardy claim on appeal? (See 1 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Defenses, § 186, p. 544; In re Lazoya (1956) 146 Cal.App.2d 702, 704.) If the court were to determine that the answer is "yes," should such a ruling apply retroactively, or should it apply prospectively only?

#01-77 Jefferson v. Department of Youth Authority, S097104. The court ordered supplemental briefing on the following issues: If a compromise and release concedes that the injury arises out of and in the course of employment and therefore falls within the compensation bargain, is an order approving the compromise and release res judicata, precluding civil actions asserting that the injury falls outside the compensation bargain? (See, e.g., Lopez v. Sikkema (1991) 229 Cal.App.3d 31; Young v. Libbey-Owens Ford Co. (1985) 168 Cal.App.3d 1037; Busick v. Workmen's Comp. Appeals Bd. (1972) 7 Cal.3d 967.) Is this res judicata issue properly before this court?